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C O N F I D E N T I A L SECTION 01 OF 03 BAGHDAD 000426

SIPDIS

//////C O R R E C T E D C O P Y. CHANGED PARA MARKING FOR PARA 12
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SIPDIS

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TAGS: [PGOV](#) [KDEM](#) [IZ](#)
SUBJECT: CONSTITUTIONAL REVIEW: IDENTIFYING PRIORITIES,
OUTLINING NEXT STEPS

BAGHDAD 00000426 001.2 OF 003

Classified By: Political Counselor Margaret Scobey for Reasons 1.5 (b)
and (d)

¶1. (C) Summary. In the two and a half months since the Council of Representatives (CoR) named the Constitutional Review Committee (CRC), political parties have yet to engage substantively over possible constitutional amendments. Tawafuq, in collaboration with several smaller political parties, and Ayad Allawi's Iraqiyya list each submitted comprehensive revisions to various articles. The CRC formed three sub-committees, led by CRC chairman Humam Hammoudi (SCIRI) and CRC deputy chairs, Ayad al-Sammarai (IIP) and Fouad Masoum (PUK). These committees have been tasked to examine political issues (al-Sammarai), important but less controversial issues (Hammoudi), and technical issues where the Constitution requires further clarification (Masoum). CRC members have told emboffs that the CRC will make its final recommendations to the CoR in late April.

¶2. (C) Summary cont. While the CRC does not yet have a final, complete set of proposed amendments, private conversations with individual members suggest that federalism, resource sharing, strengthening the central government, and Kirkuk are key issues. Additionally, issues such as reviewing the judicial structure, Arab identity, the personal status provision, and the Federal Council will be addressed. The CRC does not have formal by-laws, but CRC member Sami al-Askari (Shia, independent) said that the committee will not vote on proposed amendments but will operate by consensus. Thus any and all proposals made to the CRC could move forward to CoR even if only one person wanted to propose it. He also said that the CoR would discuss and vote on each proposal separately (and not as a single all-or-nothing bloc of amendments as some have suggested). The United Nations is actively engaging with the CRC and has identified four key areas they will encourage the CRC to review (septel). The UN and other NGOs have planned several trips and conferences with CRC members during February with a goal of providing different examples of a federal system of government. End Summary.

THE BIG ISSUES: RESOURCES, FEDERALISM, KIRKUK

¶3. (C) As chair of the political subcommittee, Ayad al-Sammarie (IIP) leads efforts to compile suggestions and make recommendations on those issues which will require political consensus to resolve. In conversations with poloffs, he identified resource distribution, federalism and the redistribution of central government powers away from the Prime Minister and to the Presidency Council and the CoR

Speaker as key issues which his committee would address. He further noted that Article 140, which requires a referendum to determine Kirkuk and other disputed territories' final status, will be addressed. According to al-Sammarie, Kirkuk should be given special status because of its diverse makeup and the potential for it to be a flashpoint of regional tension. As Iraq's only seaport, Basrah should also be given special status similar to Baghdad, which would prevent it from joining a region or another province, al-Sammarie said.

14. (C) In a separate meeting with poloffs, CRC co-Secretary Abbas al-Bayati (Shia Independent) also identified Kirkuk, federalism, and resource sharing as critical issues to be addressed and noted that "behind the scenes discussions with political leaders" will resolve most of them. When asked specifically about Kirkuk and the likelihood of support for changing Article 140, al-Bayati agreed that the Kurds would object to changes but noted that Sunni Arabs and Turkmen "have asked for changes," while Shia Arabs are not opposed to changes. It will be difficult, he said, to hold a referendum for Kirkuk in 2007, suggesting instead that a formula for power-sharing in the city be devised and the referendum delayed for "five to ten years."

OTHER KEY ISSUES: JUDICIAL REFORM, HUMAN RIGHTS, IDENTITY

15. (C) In addition to the substantive political issues, the Constitutional Review process offers an opportunity to review articles and issues which need further clarification or development. Chief among these issues is revising constitutional articles pertaining to Iraq's judicial system. The High Judicial Council led by Iraqi Chief Justice Madhet al-Mahmood has proposed several changes which "support the separation of powers and confirms the independence of the judiciary" and clarify the relationship between regional and federal courts. The UN has taken an active role on this issue, including hosting a January 20-24 conference in Cairo between CRC members, Iraqi judges and international legal

BAGHDAD 00000426 002.2 OF 003

experts.

16. (C) In a meeting with poloffs, CRC member Hassan al-Shemmari (Fadhila) emphasized his party's desire to amend the constitution to emphasize Iraq's Arab identity. CoR members Maysoon al-Damluji, Safia al-Suhail and CRC co-Secretary Aliyah al-Ubeidi (all Iraqiyya) have repeatedly told poloffs their desire to delete the language in Article 41 (the personal status law), instead inserting the language of the 1959 Personal Status law (No. 188) which was widely regarded as the most progressive and protective of women's rights in the Middle East. The UN has noted that the review process offers an opportunity to strengthen human rights protections, specifically in areas concerning freedom of expression, and more specific language explicitly stating the manner and scope of emergency powers.

IRAQIYYA AND TAWAFUQ: DE-BAATH, HUMAN RIGHTS, KIRKUK

17. (C) The CRC allowed political parties, civil society organizations and private citizens until December 31 to submit recommendations. The Iraqi Minorities Council submitted comprehensive suggestions to better protect Iraq's minority communities. Ayad Allawi's secular party list, Iraqiyya, offered multiple recommendations focusing on more protection for human rights and equality, strengthening the central government in areas of resource distribution, and most importantly annulling the High Commission for De-Baathification and referring all future cases to the judicial system. While the CRC has not explicitly defined a process to address proposed constitutional changes, it is likely that the suggestions will be reviewed individually by

the appropriate sub-committee.

¶8. (C) Tawafuq, the Sunni coalition, collaborated with Hewar, the Iraqi Turkmen Front, and the Iraqi Yezidi Movement. Among their recommendations are: a focus on Arab identity; increasing the Federal Government's authority in resource distribution; revising Article 135 pertaining to the De-Baathification Commission; and broadening the referendum on Kirkuk and other disputed territories to allow all Iraqi citizens to vote on their future status. Tawafuq's efforts to find broader support for their changes demonstrate a growing awareness of the need for consensus-building. Their ability to define priorities and work with Shia and Kurdish parties will, in the end, determine their success in bringing their proposed changes to the Iraqi public in a constitutional referendum.

NEXT STEPS: CRC MEMBERS RECEIVING OUTSIDE ASSISTANCE

¶9. (C) Al-Sammarie expressed concern that the CRC does not contain the technical experts needed to address important, substantive issues. He said that he has asked the UN to provide more technical guidance on several articles and conveyed frustration at the UN's unwillingness to provide more specific technical drafting of articles for fear of appearing partisan. (Note: The UN is aware of Tawafuq's criticism and is preparing to increase the technical assistance, including experts, provided to the CRC. End Note)

¶10. (C) Several organizations, including the UN and the US Institute for Peace (USIP), will take advantage of the CoR's February recess to take CRC members on familiarization trips in Europe, Asia and the US. The UN plans two trips: one group will travel to Germany and Spain where CRC members will learn how federalism functions in those countries; another group of CRC members will travel to Malaysia where they will examine different judicial structures and federal systems. Additionally, the UN has signed a contract with the CoR to provide computers and office space for the CRC to use during the review process. USIP is planning a February 18 trip to the US for more examples of a federal system and in-depth examples concerning the regional authorities' relationship with the central government. CRC members anticipate that in March serious work will commence and political leaders will begin negotiations on the more sensitive and divisive issues.

COMMENT

¶11. (C) The constitutional review process is an important component to Iraq's reconciliation program, allowing those with grievances an opportunity to express their disagreement and push for change. CRC members have voiced concerns to embolden that the review process has moved forward too slowly.

BAGHDAD 00000426 003.2 OF 003

We assess that serious negotiations will only begin when the full CoR is getting ready to vote and that in the end deal-making will take place behind closed doors of the political bloc leaders.

¶12. (C) Assuming that Al-Askari's interpretation of the committee's procedures are correct, the committee itself will not limit what is brought before the CoR, allowing for the possibility of full debate on all issues of concern. Nevertheless, the Sunnis and others desiring fundamental changes, for example over the Constitution's provisions on federalism, will face a very uphill battle.

¶13. (C) The CRC has until May 15 to submit its recommendations to CoR. There is, however, no limit to how long CoR may debate the proposals. The CRC's success

will ultimately be measured by the degree to which political parties engage in these negotiations, and whether those who have felt marginalized in the political process view the CRC's efforts as a fair chance to improve the constitution.

KHALILZAD